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Letter dated 16 October 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 April 2003 (S/2003/445).

The Counter-Terrorism Committee has received the attached third report from Portugal submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 18 September 2003 from the Permanent Representative of Portugal to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

With reference to the letter dated 4 April 2003, I have the honour to enclose the third report to be submitted by Portugal to the Counter-Terrorism Committee pursuant to paragraph 6 of resolution 1373 (2001) (see enclosure).

(*Signed*) Gonçalo **Santa Clara Gomes**
Permanent Representative of Portugal to the United Nations

Enclosure

REPORT FROM PORTUGAL ON THE APPLICATION OF RESOLUTION 1373 (2001)
CLARIFICATIONS REQUESTED BY THE UNITED NATIONS
COUNTER TERRORISM COMMITTEE

In response to Question 1.2, it should be stated that Portugal ratified the International Convention for the Suppression of the Financing of Terrorism, by enforcement of the President of the Republic's Decree 31/2002, dated 2nd of August. In the meantime, the Government has presented for discussion in the Parliament a proposal of law to fulfil the Framework-Decision 2002/475/JAI, of the Council of the European Union, dated 13th June 2002, for the purpose of combating terrorism.

The aforementioned proposal, which we trust will soon be approved, apart from extending liability for the practice of terrorist crimes and the participation in terrorist organisations to corporate bodies and mere organisations, without excluding the individual liability of their respective leaders or employees, criminalizes the act of financing terrorism, even if in a non-autonomous manner: - "Whoever promotes or establishes a group, an organisation or a terrorist association, joins **or supports** them, particularly by providing information or material means, or **provides any type of financing to support their activities**..." - punishing perpetrators with imprisonment of 8 to 15 years. Furthermore, it should be emphasised that such behaviour is regarded as a crime under paragraph 2 of article 300 of the Code of Criminal Procedure in force.

Thus, the licit or illicit origin of the funds is irrelevant, and consequently it is not required that such funds are or have been, in fact, used for the financing of terrorist acts or terrorist organisations.

We are now awaiting the debate of this matter and the approval of the relevant proposal by the Parliament and shall provide the CTC, *a posteriori*, with the comments deemed pertinent.

As indicated in Question 1.3, the applicable legislation does not compel banks and other financial institutions to provide information on banking transactions suspected of having connections with the financing of terrorism. There is only an obligation to report any suspected money laundering activities.

Nevertheless, under the legislation in force (Decree-law 325/95, dated 2nd December) terrorism is a violation underlying the money laundering crime, which also includes its financing, pursuant to paragraph 2, Article 300, of the Penal Code. In such cases, and as indicated in the Special Recommendation III for Combating the Financing of Terrorism, of the FATF, should financial institutions or other bodies responsible for the prevention of money laundering offences either suspect, or have any reasonable motives to suspect, that such funds are connected with terrorism, or may be used for terrorist purposes, terrorist acts or terrorist organisations (from which source the respective financing may derive), they shall be compelled to report their suspicions to the competent authorities.

It is not the task of financial organisations to assess or even to investigate which crime is underlying the transaction – be it terrorism, its financing, arms trafficking or any other offence – all they are expected to do is to report the suspected transaction, should there be any reasonable cause for suspicion.

With respect to the freezing of funds, Question 1.4 raises the following comments:

- The basis for the freezing of funds belonging to persons or entities identified in the lists connected with terrorist activities is stipulated in Regulation (EC) 2588/2001, dated 27th December 2001, of the Council of the European Union. Under paragraph 3 of Article 8 of the Constitution of the Portuguese Republic, and Article 189 of the Treaty of Rome, which created the European Community, Regulations are enforced directly in the Portuguese internal legal order without requiring a specific act of transposition. Therefore, no legislative initiative destined to execute the respective rules is required.

- For those persons or entities which are not referred in the above mentioned lists the legal framework provided by the Portuguese Penal Code (Articles 109 -111) and the Code of Criminal Procedure (articles 108 and on) applies, that is, solely within the scope of criminal proceedings or of a running investigation. Article 181 of the Code of Criminal Procedure applied within the scope of a criminal investigation permits the freezing of accounts and assets that are detected in financial institutions operating in Portugal. Under these circumstances, the above-mentioned Regulation (EC), 2580/2001, dated 27th December 2001 is applicable.

- Regulation (EC) 2580/2001, dated 27th December 2001, has increased, to a certain extent, the possibility of freezing or controlling bank accounts and has made feasible, through administrative channels, the fight against situations of terrorism. Freezing or controlling of accounts was only possible if an court official decided to

grant permission for it in order to prevent money laundering crimes, pursuant to Article 4 of Law 5/2002, dated 11th January or, in general terms, in conformity with the regulations of the Code of Criminal Procedure.

- Requests for the freezing of funds made by other States shall be fulfilled, pursuant to the provisions of the mentioned Regulation (EC) 2580/2001, dated 27th December 2001, whenever it deals with persons or entities whose names appear in the list referred to in sub-paragraph a) of paragraph 1 of Article 2, or if a request for judicial assistance is addressed to Portugal, for persons or institutions that are not mentioned in the list, which shall be fulfilled in conformity with Law 144/99, dated 31st August, concerning judicial international co-operation on criminal matters.

- Financial institutions effectuate the freezing of funds immediately after the relevant lists forwarded by the competent authorities are received. Under the terms provided in the mentioned European Community Regulation, in Portugal these bodies are the Ministry of Finance and the Ministry of Foreign Affairs, respectively the Directorate-General for European Affairs and International Relations and the Directorate-General for Multilateral Affairs.

- Question 1.5 falls under the jurisdiction of the Ministry of Internal Affairs and the Ministry of Finance. The former is responsible for granting permits for organising public collections, bazaars and similar activities (vide Decree-Laws 11223, dated 6th November 1925 and Decree-Law 264/88, dated 26th July) as well as to issue registrations for associations and foundations (Decree-Law 215/87, dated 29th May,

Decree-Law 594/74, dated 7th November and, also Decree-Law 119/83 and Decree-Law 159/76, dated 30th August, apart from what the Civil Code regulates).

- Issues concerning privileges, benefits and tax exemption fall under the purview of the Ministry of Finance. The Law on Religious Freedom (Law 16/2001, dated 22nd June), in particular its Article 21, subjects non-religious activities performed by churches and religious communities – such as social welfare or charitable, educational or cultural work, commercial and profitable activities – to the legal system in general, and in particular, to the fiscal system by which this type of activity abides.

- Question 1.6 also falls under the purview of the Ministry of Internal Affairs. It should, however, be stressed that the Constitution of the Portuguese Republic protects a common set of fundamental rights and guarantees, out of which we emphasise the right to family privacy (Article 26), the right to the inviolability of domicile (Article 34) and the freedom of association (Article 46).

- According to the latter provision, all citizens have the right to form associations freely and without prior authorisation, if the associations are not intended to promote violence and if their objectives are not contrary to criminal law. Associations may pursue their objectives freely and without interference from any public authority, and they may not be dissolved by the State, nor their activities suspended, unless by judicial decision in the circumstances prescribed by law.

- Consequently, according to constitutional and criminal law in force, persons and organisations with religious, charitable and non-profit objectives may only be submitted to surveillance by the authorities if there is any suspicion that they are involved in criminal practices and for the proceedings of an investigation destined to obtain evidence on the existence of criminal acts.

The recruitment of members of terrorist groups, whether inside or outside the national territory, and the supply of weapons to terrorist groups, associations or organisations is criminalized by Articles 300 and 301 of the Penal Code, being the examples indicated in paragraph 2 of Article 299 applicable, possessing a connected relationship with the provisions pointed out.

In opposition to what is stated in Question 1.7, under sub-paragraph a) of paragraph 1 of Article 5 of the Penal Code (acts practised outside Portuguese territory) Portuguese criminal law is further applicable to acts committed outside national territory whenever these are considered crimes as indicated in Articles 300 and 301, dealing with, respectively, terrorist organisations and terrorism. On the other hand, paragraph 2 of Article 5 refers that Portuguese law is also applicable to acts perpetrated outside national territory and which the Portuguese State pledged to judge on account of international treaties or conventions. Therefore, Portugal completely complies with the demands of Resolution 1373 (2001) in this regard.

Subparagraph a) of paragraph 2 of Resolution 1373 (2001), far from what is stated in Question 1.8, simply refers that States (quote): "shall refrain from providing any form of support, active or passive, to entities or

persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists", which does not mean, as we understand it, that States are obliged to enforce legal provisions to regulate the manufacture, sale, possession, storage and transportation, the import and export of arms, ammunition or explosives.

Nevertheless, article 275 of the Portuguese Penal Code already takes into account this concern penalizing the importation, manufacture, transformation, storage, purchase and selling, cession or acquisition, for any reason or by any means, the transport, distribution, detention, the use or carrying of a weapon classified as war equipment, a forbidden firearm or devices for spraying toxic, asphyxiating, radioactive or corrosive substances or any explosive device or substance that is radioactive or adequate for the production of toxic or asphyxiating gas.

In response to Question 1.2 above, we stated that a general draft Law for combating terrorism has been approved.

In response to Question 1.9, and as already indicated in the National Report, Portugal has ratified all international legal instruments to which the Annex to the International Convention for the Suppression of the Financing of Terrorism refers to. In this case, the Penal Code defines as being offences the conduct established therein, in accordance to articles 158, 161, 272 to 275 paragraph 2, 287, 288, 300, 301, and 322.

Regarding of Question 1.10, we are enclosing a copy of the Self-Evaluation Questionnaire from FATF for the year 2002, dealing with 8 Special Recommendations for Combating the Financing of Terrorism.

As regards Point 2.1 – assistance and guidelines – we believe that Portugal does not require receiving technical assistance from CTC in order to apply Resolution 1373 (2001).

On the other hand, to what concerns Point 2.3 and 2.4, and also regarding technical assistance issues, we deem relevant to inform CTC that Portugal, through the Ministry of Justice, has adopted a Memorandum of Understanding entitled "International Promotion and Co-operation for the Purposes of the United Nations Convention Against Transnational Organised Crime and the Conventions and Protocols for Combating Terrorism" with the United Nations International Centre for the Prevention of Crime (CICP). This document aims at providing assistance to Portuguese speaking countries for the ratification and application of the relevant legal instruments and, likewise, of the future Convention against Corruption, as well as for the application of the Rules and Principles concerning the Prevention of Crime and Criminal Justice.

Summing up, Portugal reiterates its availability to grant technical assistance to the above mentioned countries and to provide it within the scope of Resolution 1373 (2001) too.